IMPLICATION OF TRIMS AGREEMENTS IN INTERNATIONAL TRADE AND RELATIONSHIP WITH LEGAL DEVELOPMENT IN INDONESIA

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Submission date: 27-Sep-2019 08:44AM (UTC+0700)
Submission ID: 1180942250
File name: ART20179716.pdf (148.69K)
Word count: 4277
Character count: 23943

International Journal of Science and Research (IJSR)
ISSN (Online): 2319-7064
Index Copernicus Value (2016): 79.57 | Impact Factor (2015): 6.391

Implication of Trims Agreements in International Trade and Relationship with Legal Development in Indonesia

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Abstract: *As a member of the World Trade Organization (WTO), Indonesia shall implement the provisions contained in the WTO Agreement including agreements concerning investments as arranged in the TRIMs. With the ratification of the WTO Agreement, various legal reform measures shall take place. In relation to investment it is necessary to undertake a policy change in the field of investment that not only takes into account the obligations set out in the TRIMs agreement, but so far as possible takes into account the national interest by utilizing exceptions and transition periods while updating the investment legislation in line with the TRIMs deadlock. In order to avoid conflicts in their application, the TRIMs Agreement shall be understood well and in the case of an unclear term, interpretations shall be made under general rules of international treaty interpretation. Renewal of investment regulations is only one of the means that is expected to solve investment problems in Indonesia. Factor that is not less important is how to create a conducive climate to try so that investors want to invest in Indonesia. Conducive climate can be created with the guarantee of security, political stability and harmonious labor relations.*

Keyword: International Trade, Relationship

1. Introduction

The current problem of international relations of nations or international societies is governed by international treaties previously governed by customary international law. Therefore, it can be said that international treaties are regarded as the most important source of law. [1] This is due to the holding of special arrangements of various types of transnational activities as a result or product of a modern condition of international life, so that countries make international treaties on all sorts of topics of concern, such as investment-related issues. cursive writer).

However, behind such an important role, there can be problems with the interpretation and application of treaties in international practice. According to Prof. Dr. Yudha Bhakti "most of the international disputes relate to the validity and interpretation of treaties. [2] This international conflict can occur in the field of International Treaty Law which regulates inter-state trade issues, as governed by the International Trade Organization Agreement (*World Trade Organization*) [3] resulting from the Uruguay Round.

In order to minimize, if it can not avoid the ons of inter-state conflicts in the interpretation of agreements in the field of international trade, the general rules of interpretation in international treaties must be well understood. [4] This is important not only for the relevant government officers, but also for business people.

Uruguay Round (Uruguay Round), which started in Punta Del Este, Uruguay and ended in Marrakesh with the signing of Marrakesh Agreement in 1994, has significance for international trade.[5] The importance of this agreement for international trade is due to several things: Firstly, the Marrakech Agreement not only regulates the trade in goods that have been regulated in the General Agreement on Tariff and Trade (hereinafter referred to as GATT), but also regulates new issues such as: *trade in services, [6] Trade-Related Aspect of Intellectual Property Rights [7],act.*

Secondly, the Marrakesh Agreement also established a permanent World Trade Organization (WTO). Despite the above significance, the completion of Uruguay's round also has important economic impacts, including [8]:

- Increased international trade flows
- Creating market opportunities for various products
- The same opportunity for both developed and developing countries to exploit the open market opportunities
- Competition is getting sharper
- Standing position is the same so that apply the laws of nature, the strong win.
- Nevertheless, developing countries like Indonesia still face special problems in implementing Uruguay Round results due to the following factors:
- Less popularized results Uruguay Round
- Difficulties for adjustment of domestic regulations, institutional structures and trade infra-structures.
- Lack of ingenuity in human resources.
- Insufficient data collection.

For Indonesia, as one of the States parties to the WTO Agreement, the provisions contained therein shall bind Indonesia and become part of its national law. In addition, the WTO agreement brings various implications that can be both opportunity and challenges.

As a consistent step towards the ratification that Indonesia has undertaken, changes to the existing Law and the establishment of a new Law are steps to be taken. There are many areas of law that need attention in facing the era of global competition, among others the law of agreement,

competition law, law in the field of foreign investment. However, the sociological changes and the formation of the new law is not an easy and simple task. Given that the changes and the formation of the law are not only directed to the compliance of international obligations, but also how Indonesia's participation in the WTO agreement provides benefits to the Indonesian nation.

This study of agreement in the field of TRIMs will be the focus of analysis, especially on the question of how far the laws and regulations in the field of investment are formulated so that on one hand does not conflict with its international obligations and on the other hand still protect the national interest. Or in other words how to formulate laws and regulations in the field of investment that can capture the opportunities and challenges that increasingly heavy in this 21 century. Of course the law is only one of the means that is expected to increase the power of Indonesia in competing in the midst of globalization. Therefore, then other factors are very important to put forward briefly in this paper. For that purpose, this paper will also describe the influence of non-legal factors that are very influential for investment activities, such as; security, political stability and labor.

2. Discusion

Implication of TRIMS Agreement for Indonesia

As noted above, that with the ratification of Indonesia in the WTO agreement means that there is an obligation to implement the provisions contained in such agreements, such as agreements on trade-related investment rules (TRIMS) as regulated in Annex 1A of the Marrakesh Agreement.In this regard, as a member of the WTO, on the one hand Indonesia must adapt to the provisions of the WTO Agreement not to violate its international obligations which may result in the complaint of Indonesia at the Dispute Settlement Dispute Settlement Agency Body (DSB) WTO, on the other hand must take advantage of opportunities that exist in achieving free market profits.

Indonesia can not close itself from the current globalization. Globalization is an ongoing reality in the international community that must be accepted and should be responded positively. The trick is to play in it, to compete with other countries, to recognize weaknesses (eg weaknesses in the field of national investment law) and to strengthen itself and to harness that power. It is true that the illustration put forward by M. Khor as quoted by Tonny Pongoh that the position of developing countries is similar to a bunch of chickens interviewed by chefs, where they haruys choose in what way they will die and with what seasoning their meat will be cooked. Regardless of the phenomenon, from the legal aspect, the ratification made by Indonesia against the WTO Agreement brings an implication in the form of rights and obligations that must be utilized and implemented properly as stated by Prof. Mochtar Kusumaatmadja in one of his papers submitted to the International Business Activity Upgrading in 1997 in Bandung, said that, "Indonesia's attachment to WTO is a reality. And therefore necessary legal efforts to follow up and deal with issues arising from WTO approval, for example in the field of investment as stipulated in the TRIMS (cursive author). [4]

It should be noted here that in general the entry in the TRIMs definition if the regulations in the field of investment in a country are associated with requirements that may affect the trade as well: investment licenses associated with, among others, the requirements of domestic ownership, local content, exports, trade balance, production capacity, production type, technology transfer persy, etc. [10] The TRIMs Agreement does not govern the policy of investment, a matter which is left entirely to each country to formulate and implement the investment policy. Approval of TRIMs only concerns investment regulations concerning merchandise trade only. [11]

The 1994 TRIMs arrangement is basically the same and confirmation of what has been set forth in Article III and XI of the General Agreement on Tariffs and Trade (GATT) 1947, which prohibits the existence of investment rules that may interfere with or inhibit the smoothness of free trade of goods with no question of the origin (creating substantial equality of opportunities for goods irrespective of their origin). [12] The prohibition is reaffirmed in the WTO Panel report in the following cases of Oilseeds:

"*the Contracting Parties have consistently interpreted the basic provisions of the General Agreement on restrictive trade measures as provisions establishing conditions of competition…A previous Panel pointed out that Article III and XI are to protect expectations of the Contracting Parties as to the competitive relationship between their products and those of other Contracting Parties…* "

Article III paragraph 4 reads as follows:

"*the product of the territory of any Contracting Party imported into the territory of any other contracting party shall be accorded treatment no less than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.*"

Based on Article III paragraph 4 above means that the state must provide equal treatment between domestic and foreign products (national treatment).

Article XI further sets out:
"*no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quota, import or export licenses or other measure, shall be instituted or maintained by any Contracting Party on the importation of any product of the territory of any Contracting Party or on the exportation or sale for export of any product destined for the territory of any other Contracting Party*".
Based on the two articles mentioned above means that in addition to Member States should pay attention to national prinepip treatment is also prohibited to restrict imports of goods of other countries apart from restrictions in the form of customs, taxes or other levies. [13]
The provisions of Articles III and XI are reaffirmed in Article 2 of the TRIMs which read as follows:

"*Without prejudice to other rights and obligations under GATT 1994, no member shall apply any TRIMS that is*

inconsistent with the provisions of Article III or Article XI GATT 1994"

Article 2 requires that none of the WTO member states may apply the rules and regulations in the field of investment that may interfere with or inhibit the free trade of merchandise. An illustrative list of TRIMs that is inconsistent with the national treatment obligations set forth in Article III paragraph 4 and the general abolition of quantitative restrictions as set forth in Article XI paragraph 1 of GATT 1994 and can be seen in the annex of the TRIMs agreement.

The "Illustrative list" stipulated by the Director General of GATT / WTO attached to the TRIMs Agreement is essentially a limitation of the determination of the necessity of using local components in the industrial production process. The action requires using the local content usually by way of: [14]

1) To limit the import of products used in the production process or related to the volume of local production or the value of the production exported by the enterprise concerned;
2) restrict the import of products used in or related to local production by limiting the availability of foreign exchange to the amounts entered by other companies;
3) to limit export of sale for export, either by its product class, by volume or by comparison of volume or value of the domestic production of the enterprise concerned.Besides the necessity of using local materials, the following may also include TRIMs: [15]
   a) The requirements for the use of raw materials, semi-finished materials, parts and parts made in the country, a business activity or in the production of a good, self-produced or obtained from another company in the country.
   b) Export requirements associated with investment (export requirement)
   c) Trade balancing limitations;
   d) Limitation on production capacity (manufacturing limitations);
   e) The necessity to make certain production (mandatory product requirement);
   f) Requirements of share ownership composition of foreign partners with local partners (local equity requirements)

An illustration of how an action or policy measure taken by a country that could harm or disrupt trade in goods and violate provisions in GATT can be read in the FIRA case [16], *cases between Canada and the United States. In this case Canada through Canada's Foreign Investment Review Act establishes a policy in the field of investment that requires the necessity of use; local content, local manufacturing and minimum export. The United States is of the opinion that the three requirements (requirements) conflict with the GATT provisions. In this case The FIRA Panel decides that violation of GATT provisions is deemed to be harmful and harmful to other countries.*

Based on the foregoing description, a temporary conclusion can be drawn that in the framework of formulating a policy in the field of investment the various provisions and regulations as regulated in Article III (national treatment), Article XI (concerning restrictions on the application of restrictions on imports of goods other than) and other restrictions as contained in the "illustrative list" should always be considered. If not, then the policy in the field of investment in Indonesia can not be expected much in attracting foreign investors to invest their capital in Indonesia. In addition to the importance of observing the provisions of the TRIMS agreement, particularly those of a prohibition as described above, an exception clause must also be utilized.

Exception of TRIMs approval

The principle of national treatment as stipulated in Article 2 of the TRIMs is essentially a prohibition of the difference in treatment between foreign goods and domestic product, which means that once imported goods have entered the domestic market of a member country, customs areas and pay import duties (if any), then the imported goods shall be treated equally or no worse (no less favorable) than domestic products. However, to this principle, there are exceptions as set forth in several articles, including the following: pasal VI (*Anti Dumping and Countervailing Duties*).

Under this article a country may impose a discriminatory increase of duties on imported goods if such imports are exported by the country of origin of goods by means of dumping or subsidies. In this case the addition of duty will not be exposed on such items from other countries., Article XXIV (This Territorial Application Frontier Traffic Custom Union and Free Trade Area) This article provides an opportunity for certain regions to establish their own procedures in the Free Trade Area or Custom Unions on the condition that such arrangements apply only to those areas. While other regions have other tariff schedule.

While restrictions on quantitative restrictions (Quantitative Restrictions), such as quotas and similar types of restrictions are not only important for developed countries, but also for developing countries. By the time GATT was formed, developed countries often restricted the export of agricultural, textile, steel and manufactured goods from industrialized countries. The exemptions are as follows:Pasal XII ayat 2Under this article a Member State may use quantitative restrictions on fisheries and agricultural products to stabilize the domestic market.

Article XVIII section b, a country may take non-tariff protection measures such as restricting the import of certain goods deemed to affect the balance of payments positionArticle XVII section C.1. This article provides an opportunity for a member country to use quantitative restrictions to protect the infant industry. It should be emphasized here that this measure is only permitted if tariffs are not able to protect the "baby industry".

The exceptions as described above should be utilized as efficiently and effectively as possible to stabilize the domestic market, in order to balance of payments and the protection of the "baby industry". Because of protectionist measures that do not fit into the above exceptions, it allows other countries to take retaliation measures that could be detrimental to the increased export interest which in turn is detrimental to the economic interests of the country. In addition, it may be mentioned here that in addition to

restrictions on the importation of goods of other countries, there are also provisions which may be grounds for prohibiting the entry of goods from other countries for reasons to protect human health, animals and plants (Sanitary and Phytosanitary) as well as arranged in Article XX GATT / WTO. [16] In addition, environmental issues are also often the reason for investors to relocate their investments. The tightening of environmental standards in developed countries is one of the important factors why investment is diverted to a country that has a looser environmental standard. The orientation of direct investment from United States to developing countries in the 1990s, in the type of dirty industry, such as chemicals, pulp, metals and oil products has increased. These barriers are often classified as non-tariff barriers (*non-tariffs barrier*).

Transition Period

Besides exceptions to the obligations set out in article 2 of the TRIMs agreement that can be utilized for developing countries such as Indonesia, there are other opportunities that can be used while fixing policies and regulations in the field of investment, namely by utilizing the transitional period as set forth in Article 5, especially paragraph 1 which reads as follows:
"*Members, within 90 days of the date of entry into force of the WTO Agreement, shall notify the Council for Trade in Goods of all TRIMS they are applying that are not in conformity with the provisions of this Agreement...* "

Under that article the member countries shall report the action taken which is expected to impede the flow of trade in goods to one of the Council at the WTO, the Council for Trade in Goods. Each country must abolish the TRIMs they have reported within 2 years for developed countries and 5 years for developing countries. For developing countries this transitional period can be requested for extension on condition that they have great difficulty in implementing TRIMs agreement. In considering these circumstances the Coincil for Trade in Goods will take note of the development of the member country concerned, including financial and trade needs.

It should be emphasized, however, that during the transitional period, Member States may not alter the terms or conditions of the TRIMs they report to the Council for Trade in Goods starting from the entry into force of the Marrakesh Agreement, which changes may result in the occurrence of deviations from the stipulated provisions in Article 2 of TRIMs.

The above provisions shall be taken into account by the Government of Indonesia in drafting a policy in the field of investment, in particular on the one hand, taking into account the provisions that laid down the obligations and restrictions that must be met and exploit the good opportunities contained in the articles governing exceptions and transitions. However, it should be remembered that investment issues are not solved by the formulation of appropriate policies (juridical factors), but non-legal factors (security factors, political stability and labor conditions) are no less critical to be constantly scrutinized and created to attract investors to embed of his capital in Indonesia.

3. Conclusion

Based on the above description can be drawn several conclusions as follows:

1) As a member of the World Trade Organization (WTO), Indonesia shall implement the provisions contained in the WTO Agreement including agreements concerning investments as arranged in the TRIMs.
2) With the ratification of the WTO Agreement, various legal reform measures shall take place. In relation to investment it is necessary to undertake a policy change in the field of investment that not only takes into account the obligations set out in the TRIMs agreement, but so far as possible takes into account the national interest by utilizing exceptions and transition periods while updating the investment legislation in line with the TRIMs deadlock.
3) In order to avoid conflicts in their application, the TRIMs Agreement shall be understood well and in the case of an unclear term, interpretations shall be made under general rules of international treaty interpretation.
4) Renewal of investment regulations is only one of the means that is expected to solve investment problems in Indonesia. Factor that is not less important is how to create a conducive climate to try so that investors want to invest in Indonesia. Conducive climate can be created with the guarantee of security, political stability and harmonious labor relations.

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